THE HON'BLE MRS JUSTICE T.MEENA KUMARI

&

THE HON'BLE MR JUSTICE P. LAKSHMANA REDDY

WRIT APPEAL NO :1495 of 2005

Dated: 22.08.2005

Between:

The Depot Manager, APSRTC, Midhani Depot, Hyderabad.

..Appellant

Vs.

S. Narsimulu, S/o Somaiah

…. Respondent.

THE HON'BLE MRS JUSTICE T.MEENA KUMARI

&

THE HON'BLE MR JUSTICE P. LAKSHMANA REDDY

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WRIT APPEAL NO :1495 of 2005

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JUDGMENT: (Per the Honourable Smt Justice T. Meena Kumari)

This writ appeal is filed by the appellant herein aggrieved by the order passed by the learned Single Judge in WPNo.23886 of 2004 dated 30.12.2004.

The appellant herein is the respondent and respondent herein is the petitioner in the writ petition.

Originally, the writ petition was filed seeking a direction in the nature of writ of mandamus, to declare the proceedings No.02/95, (19)/2004-MDN dated 1.12.2004 issued by the respondent removing him from service with immediate effect and further treating the suspension period as not on duty for the purpose of Leave, Increments and Gratuity, as arbitrary and to set aside the same.

It is the case of the writ petitioner that on the allegation of certain irregularities, the respondent, without conducting any enquiry and without considering his explanation in pursuance of the orders passed by this Court in W.P.No. 14307 of 2004, removed him from service. Further, apprehending that in case the appeal that has to be filed as per the regulations before the Divisional Manager, Hyderabad, is filed before him, much prejudice would be caused to him, the writ petitioner sought a direction of this Court to dispose of the same by any other Divisional Manager.

The learned Single Judge while disposing of the writ petition, directed the writ petitioner to file an appeal before the Divisional Manager, Hyderabad. However, it was made clear that on filing of such an appeal, the same shall be transferred to any other Divisional Manager and shall be disposed of in accordance with the rules and regulations of the Corporation within a period of two months from the date of filing the appeal. Aggrieved by the same, the respondent-Corporation preferred the present appeal.

Heard the learned Counsel and perused the material available on record.

On a perusal of the record, it is apparent that on an earlier occasion, challenging the suspension proceedings, the writ petitioner has filed a writ petition in W.P.No.14307 of 2004, wherein this Court granted interim suspension of suspension orders while directing the respondent to proceed with the enquiry. In pursuance of the report of the Enquiry Officer, the petitioner was removed from

service. Challenging the said removal order, the petitioner filed the present writ petition in W.P. No.23886 of 2004.

Admittedly, WP No.14307 of 2004 is pending before this Court. It is also an admitted fact that the appeal against the removal lies before the Divisional Manager, Hyderabad. However, without availing such an alternative remedy, the writ petitioner has approached this Court by way of filing the present writ petition on an apprehension that he was removed from service without conducting any enquiry and without considering his explanation and if an appeal is preferred before the Divisional Manager, Hyderabad, serious prejudice will be caused to him. If that being the case, We feel that the said Divisional Manager ought to have been figured as a party in his individual capacity or in the official designation, so as to extract the truth or otherwise of the alleged prejudice. In this view of the matter and in the facts and circumstances of the case and also in view of the fact that an alternative remedy is always available to the petitioner, We have no hesitation to hold that mere attributions cannot be construed as a ground to sustain the claim of the petitioner. As a matter of fact, without filing the appeal as an alternative remedy, approaching this Court by way of the present writ petition, is a premature one, since there is no cause of action. Even in case the said appeal is preferred before the authority in question, it is within the domain the said authority to consider the request of the petitioner. Therefore, We feel that the observations of the learned single Judge, suffer from legal infirmity and the writ petition is liable to be dismissed.

Accordingly, the writ appeal is allowed setting aside the order of the learned single Judge. Consequently, the writ petition is dismissed. No order as to costs.

Justice T. Meena Kumari

Justice P. Lakshmana Reddy

Dated: 22.08.2005

Nn/rkk.